

Parliamentary election law: going for compromise

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«In no way I idealize this law, but so far it has been the best of those adopted in Ukraine and, possibly, on the territory of the CIS» stressed head of the Central Election Commission Mykhailo Ryabets, describing the new election law (Uriadovyi Kurrier, October 30, 2001). The «perfection» of the «Perfect and effective instrument for holding honest and fair parliamentary elections», as the CEC officials describe the new law, resulted from long-lasting battles and a compromise between different political forces and a variety of views on the election process and the would-be composition of the new parliament.

To realize the depth of the issue, one may recall that the initial version of the law was an effort to introduce all-partisan (proportional) electoral system. The draft bill was first approved by votes of 254 members of the parliament on January 18, 2001. However, a week later presidential chief of staff Volodymyr Lytvyn announced that the election law, adopted by the parliament, was «not adequate for the time» since «elections based on the party lists should be approached gradually» (Uriadovyi Kurrier, January 25, 2001). The presidential chief of staff argued that the President believed the old law, providing for a mixed (50:50 majoritarian-proportional) system should have been updated, improved and used for the 2002 elections (Fakty i komentarii, February 1, 2001).

The most recent version of the election law was approved by the parliament on October 18, 2001. On October 30, the media reported that the president had signed the document. Commenting on Leonid Kuchma's attitude to the new law, his spokesman Ihor Storozhuk stated that the president «judged from the view of importance of compliance of principle provisions of the law with the Constitution of Ukraine». According to Storozhuk, the president took into account the need «to finalize, as soon as possible, the procedure of reviewing the legal framework for holding the elections to the single law-making body of Ukraine in order to ensure that all subjects of the electoral process could prepare themselves timely and adequately to holding transparent, fair, democratic elections» (UNIAN, October 30, 2001). Finally, the new election law, that had been vetoed for times by President Kuchma and had undergone radical transformation, came into force on November 2, 2001.

The law specified the official start date of the election campaign: 90 days before the polling day, i.e., on January 1, 2002. The procedure of collecting signatures in support of participation of political parties and blocks in the election campaign (which proved to be remarkably controversial last time) was substituted with a requirement of money deposit as a prerequisite for registration for the race (15,000 untaxed minimum incomes for parties and blocks, and 60 untaxed minimum incomes for individual candidates, the untaxed minimum income currently equaling UAH 17 (about US\$3.2). The law also includes a provision, proposed by President Kuchma, that regional election commissions must include representatives of parties that have their factions in this parliament. Before the president's fourth veto, the right to form regional election commissions was given only to political parties that had gained more than 4% of the votes in the 1998 parliamentary elections. Naturally, the provision did not suit a number of powerful parties that had been formed since mid-1998.

While in general the new election law is clearer about specific election procedures than the 1997 law, there are some exceptions. For instance, according to the new law (Article 50) the pre-election publicity campaign may begin no earlier than 50 days before the polling day. However, as current realities demonstrate, many parties already announced the start of their campaigns and are now engaged in organizing party congresses and discussing agendas for the race. Leader of the Socialist Party of Ukraine Oleksandr Moroz, for example, was the first to announce the start of the party's campaign at a recent congress. The action did not contradict the law, as it occurred before the law came into force. Similarly, Article 51 of the law provides that limitations concerning the pre-election publicity campaign do not apply to «official announcements during the election process (without comments that may have campaigning nature, as well as video, audio recordings, films, photo illustrations) about actions of MP candidates related to their performance of their official (job) functions...» However, as the experience of previous campaigns demonstrated, in many cases (for

instance, charitable events attended by politicians during the election process) it is rather hard to tell where the official function ends and the politician's own publicity campaign and propaganda begins.

Although the president did sign the law, it is likely that the election-related norm-shaping process may continue. This assumption is supported by a peculiar (from the point of view of the law-making practice) letter of the President of Ukraine to the parliament requesting «in a fast manner, before the beginning of the elections, introduce necessary changes to the law on elections of people's deputies». The letter to MPs argues that some provisions of the election law «still do not completely provide for the implementation of constitutional provisions for holding elections to the Verkhovna Rada based on general, equal and direct suffrage - challenge timely and complete implementation of legitimate rights of subjects of the electoral process». According to the president, key reasons that may prevent «implementation of constitutional provisions» include the order of formation of local election commissions. Article 21 of the new election law provides that local election commissions may include no less than 8 persons but does not specify the upper limit of membership of a local election commission. Hence, it appears to ignore the fact that most of over 120 registered political parties may take part in the race and, therefore, may wish to send their representatives to the commissions. Moreover, a local election commission should include a representative of each candidate running for a seat in the given majoritarian constituency. As previous election showed, up to 30 candidates may run for a single seat. Given the above figures plus accredited observers, voters may find it physically difficult to find room in overcrowded polling stations. The letter also complains that «the law contains the provision due to which parties (blocks) [and] candidates will judged themselves which information about them, disseminated by the mass media, is evidently false.» Meanwhile, according to the Constitution and the laws, all claims of such kind, including protests against actions of media officials and defamation charges, should be dealt with only by the courts.

Hence, instead of threatening the MPs with yet another veto, the president asks them to make urgent amendments to the newly-adopted law. «Frankly speaking, I do not recall a precedent, but when it comes to any specific law, I, as a law-maker, may quote hundreds of examples of adopting a law while keeping the possibilities for making amendments to the valid law,» commented Oleksandr Zinchenko MP (SDPU(o)) (Den, November 1, 2001). In that sense the letter may indicate an effort to seek compromise on the rules of the game but, on the other hand, may suggest a possibility of complication of the electoral process if the demanded amendments are not made.

The newly-signed law was followed immediately with a decree of the President of Ukraine «On Ensuring Implementation of Rights of Citizens, Principles of Democratic Society, Openness and Transparency in the Process of Preparation and Holding the 2002 Elections» (#1022/2001 of October 30, 2001). Regardless the claims of best intentions to ensure fairness and transparency of the elections, it's hard to fail to note that the election process is not supposed to be regulated by presidential decrees and resolutions, but only by laws. Judging from clearly unequivocal provisions of the Constitution, «the order of organization of elections of people's deputies of Ukraine is set by law» (Article 77). Article 92, p. 20 stresses again that both organization and pursuit of elections and referenda are regulated exclusively by the law. Hence, with the adoption of the election law, the subsequent presidential decree may be viewed both as an attempt to demonstrate care about fairness of the elections and an attempt to make an impact on the process.

The decree orders local executive bodies to build their activities assuming that «creating due conditions and assisting the pursuit of elections of people's deputies of Ukraine in 2002 ... taking into account best European and global experience is nowadays one of the most significant tasks in the field of ensuring implementation of fundamental political rights of citizens, establishment of the most important values of a democratic society.» For that purpose, the Cabinet of Ministers of Ukraine is ordered «to establish, with the involvement of the Central Election Commission, within two months, an interdepartmental working group for assisting activities of official observers from foreign states and international organizations that will arrive to Ukraine to observe the process of preparation and conducting the 2002 elections». An important detail refers to the budget funds: the decree orders to «ensure full and timely funding of expenditures for preparation and conduct of elections of the people's deputies of Ukraine, deputies of local councils, village, town, city chairmen, in the amounts envisaged by the State Budget of Ukraine.» As if the election law did not specify the task for the Cabinet to finance the elections and the Cabinet was not supposed to do so without an extra command... Another paragraph of the decree demands «operatively, to take necessary measures to ensure strict observance by officials and civil servants of bodies of the executive power of requirements of the election legislation within their

competence, within the election campaign.» There is a special remark in the decree: those provisions should be used, «first of all», for ensuring «unbiased treatment of political parties, election blocks of parties - subjects of the election process, candidates for [seats of] people's deputies of Ukraine, deputies of local councils, for positions of village, town, city chairmen.» The most peculiar detail is that such a task is given to the government and local bodies of executive power. It is not quite clear whether the decree urges the executive branch to self-control or suggests that some bodies of the executive branch should control how well other executive bodies comply with the law. The problem is however, that the above tasks fall within the powers of the CEC, outlined by the election law. Actually, if local executive bodies do not ensure «unbiased treatment», not only they will fail to comply with the decree but will directly violate the election law (particularly, Article 10, «Election Process»).

The decree contains yet another controversial provision: the Ministry of Finance of Ukraine, the State Committee for Information Policy, Television and Radio Broadcasting, jointly with the National Bank and the Central Election Commission are ordered to «ensure, in accordance with the election legislation, openness and transparency for the public of spending of budget funds, allocated for the election purposes.» However, according to Article 33 of the election law, «financial support for preparation and conduct of the elections of deputies at the expense of the State Budget of Ukraine is provided by the Central Election Commission that is the main distributor of those funds». The list of institutions in charge of financial provision for the elections, specified by the law, does not include the Ministry of Finance, the National Bank and other bodies of the executive branch. The decree orders the same bodies to ensure «transparency for the public» of «formation and spending of election funds of political parties, election blocks of parties, candidates for [seats of] people's deputies of Ukraine, deputies of local councils, positions of village, town, city chairmen.» Meanwhile, according to the election law, «the order of opening and closing an election account of a political party (block), a candidate ... is set by the National bank of Ukraine based on agreement with the Central Election Commission» (Article 34).

Nearly every ministry and department was given a task to perform. For instance, the Ministry of Education and Science was ordered to join forces with the CEC and «provide for organizing, in higher and vocational educational institutions, lectures, seminars, additional classes for explaining the Ukrainian election law». The fact that both the ministry and the CEC are given extra workload and the order may interfere with the curricula does not seem to be taken into account. Even the Ministry of Culture and Arts were ordered to get involved in the election process: jointly with the CEC it is expected to «organize in libraries, clubs, other cultural institutions, thematic exhibitions, organize other events for informing the citizens about the election law, voters' rights, the voting procedure». The law-enforcement bodies were also given a role. In addition to traditional task of maintaining order the law-enforcement authorities, together with other bodies of the executive branch, and, noteworthy, together with «state and communal mass media» (!) were ordered to assist the operation of press centers to be established «relevant election commissions for comprehensive coverage of the process of organization and conduct of elections» and «for operative dissemination of other information» (?!). hence, according to the decree, the Central Election Commission is supposed to establish some «press centers» not just for «coverage» of the election race but also for dissemination some unidentified «other information»... The decree gives no indication of what the content of such information may be.

Presumably, the measures specified by the decree require due funding from the budget and, as a result, the general cost of the elections may increase substantially. It is unclear, though, whether the «thematic exhibitions» and other events of that kind specified in the decree have been actually envisaged by the draft 2002 state budget, currently being prepared by the government and the parliament.

According to the decree, the State Committee for Information Policy, Television and Radio Broadcasting, jointly with the Central Election Commission are given the task to ensure effective control over the observance by all broadcasters (regardless of the form of ownership, the decree says) of norms of the Constitution and the laws guaranteeing the freedom of expression, freedom of speech and equality of access to state-owned audio-visual media for all subjects of the election process. It is unclear, though, in what way the provisions will be applied to private or semi-private media.

Even a quick glance at the decree shows that it creates potential opportunities for a special «supervision» by a variety of agencies of the executive branch over the election race, particularly over the «election campaigning and propaganda» - no matter how sincere and reportedly good the wishes of their authors could be. The decree may open the way for tension between the CEC and specific

executive bodies that may seek to «contribute» to the election process in specific fields. There is another related risk: individual representatives of agencies of the executive branch may attempt to use the new broad powers they are given for «ensuring transparency» of the election process in order to exert influence on, or control the CEC - from the process of financing to the dissemination of «other information» from would-be press-centers. In that case, Leonid Kuchma's ironic comment comparing the squabbling political elite to a bunch of unscrupulous relatives fighting for a share of family assets (referring to the 1997-1998 parliamentary race) may become rather adequate again.

Hence, the law, the decree and the president's subsequent letter to the parliament, demanding urgent amendments suggest that debates over the rules of the 2002 election game are not over. Meanwhile subjects of the electoral process continue searching for compromise.